

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MELANIE DEL BARRIO LUTZ
a.k.a. MELANIE BITO DEL BARRIO
3733 Bobwhite Terrace
Fremont, CA 94555

Registered Nurse License No. 548136

Respondent

Case No. 2012-644

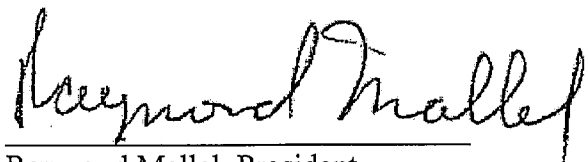
OAH No. 2012090227

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 25, 2013.**

IT IS SO ORDERED **December 27, 2012.**



Raymond Malle, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 State Bar No. 91740
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
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Attorneys for Complainant

6
7 **BEFORE THE**
BOARD OF REGISTERED NURSING
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9 In the Matter of the Accusation Against:

10 **MELANIE DEL BARRIO LUTZ**
11 **a.k.a. MELANIE BITO DEL BARRIO**
12 **3733 Bobwhite Terrace**
Fremont, CA 94555

13 **Registered Nurse License No. 548136**

14 **Respondent.**

Case No. 2012-644

OAH No. 2012090227

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
20 Registered Nursing. She brought this action solely in her official capacity and is represented in
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Frank H. Pacoe,
22 Supervising Deputy Attorney General.

23 2. Respondent Melanie Del Barrio Lutz, a.k.a. Melanie Bito Del Barrio, (Respondent) is
24 represented in this proceeding by attorney Mark Cohen, whose address is: U.S. Bank Building,
25 39510 Paseo Padre Parkway, Suite 190, Fremont, CA 94538-4716.

26 3. On or about September 17, 1998, the Board of Registered Nursing issued Registered
27 Nurse License No. 548136 to Melanie Del Barrio Lutz, a.k.a. Melanie Bito Del Barrio,
28 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to

1 the charges brought in Accusation No. 2012-644 and will expire on June 30, 2014, unless
2 renewed.

3 JURISDICTION

4 4. Accusation No. 2012-644 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on April 18,
7 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-644 is attached as Exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-644. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2012-644.

27 10. Respondent agrees that her Registered Nurse License is subject to discipline and she
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1 **Severability Clause.** Each condition of probation contained herein is a separate and
2 distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
7 detailed account of any and all violations of law shall be reported by Respondent to the Board in
8 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
9 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
10 45 days of the effective date of the decision, unless previously submitted as part of the licensure
11 application process.

12 **Criminal Court Orders:** If Respondent is under criminal court orders, including
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
16 the conditions of the Probation Program established by the Board and cooperate with
17 representatives of the Board in its monitoring and investigation of the Respondent's compliance
18 with the Board's Probation Program. Respondent shall inform the Board in writing within no
19 more than 15 days of any address change and shall at all times maintain an active, current license
20 status with the Board, including during any period of suspension.

21 Upon successful completion of probation, Respondent's license shall be fully restored.

22 3. **Report in Person.** Respondent, during the period of probation, shall appear in
23 person at interviews/meetings as directed by the Board or its designated representatives.

24 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
25 practice as a registered nurse outside of California shall not apply toward a reduction of this
26 probation time period. Respondent's probation is tolled, if and when she resides outside of
27 California. Respondent must provide written notice to the Board within 15 days of any change of
28 residency or practice outside the state, and within 30 days prior to re-establishing residency or

1 returning to practice in this state.

2 Respondent shall provide a list of all states and territories where she has ever been licensed
3 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
4 information regarding the status of each license and any changes in such license status during the
5 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
6 license during the term of probation.

7 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
8 or cause to be submitted such written reports/declarations and verification of actions under
9 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
10 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
11 Respondent shall immediately execute all release of information forms as may be required by the
12 Board or its representatives.

13 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
14 state and territory in which she has a registered nurse license.

15 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
16 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
17 6 consecutive months or as determined by the Board.

18 For purposes of compliance with the section, "engage in the practice of registered nursing"
19 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
20 non-direct patient care position that requires licensure as a registered nurse.

21 The Board may require that advanced practice nurses engage in advanced practice nursing
22 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

23 If Respondent has not complied with this condition during the probationary term, and
24 Respondent has presented sufficient documentation of her good faith efforts to comply with this
25 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
26 extension of Respondent's probation period up to one year without further hearing in order to
27 comply with this condition. During the one year extension, all original conditions of probation
28 shall apply.

1 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
2 prior approval from the Board before commencing or continuing any employment, paid or
3 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to her employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within seventy-two
9 (72) hours after she obtains any nursing or other health care related employment. Respondent
10 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
11 separated, regardless of cause, from any nursing, or other health care related employment with a
12 full explanation of the circumstances surrounding the termination or separation.

13 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
14 Respondent's level of supervision and/or collaboration before commencing or continuing any
15 employment as a registered nurse, or education and training that includes patient care.

16 Respondent shall practice only under the direct supervision of a registered nurse in good
17 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
18 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
19 approved.

20 Respondent's level of supervision and/or collaboration may include, but is not limited to the
21 following:

22 (a) Maximum - The individual providing supervision and/or collaboration is present in
23 the patient care area or in any other work setting at all times.

24 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
25 care unit or in any other work setting at least half the hours Respondent works.

26 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
27 person communication with Respondent at least twice during each shift worked.

28 (d) Home Health Care - If Respondent is approved to work in the home health care

1 setting, the individual providing supervision and/or collaboration shall have person-to-person
2 communication with Respondent as required by the Board each work day. Respondent shall
3 maintain telephone or other telecommunication contact with the individual providing supervision
4 and/or collaboration as required by the Board during each work day. The individual providing
5 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
6 patients' homes visited by Respondent with or without Respondent present.

7 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
8 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
9 or for an in-house nursing pool.

10 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
11 registered nursing supervision and other protections for home visits have been approved by the
12 Board. Respondent shall not work in any other registered nursing occupation where home visits
13 are required.

14 Respondent shall not work in any health care setting as a supervisor of registered nurses.
15 The Board may additionally restrict Respondent from supervising licensed vocational nurses
16 and/or unlicensed assistive personnel on a case-by-case basis.

17 Respondent shall not work as a faculty member in an approved school of nursing or as an
18 instructor in a Board approved continuing education program.

19 Respondent shall work only on a regularly assigned, identified and predetermined
20 worksite(s) and shall not work in a float capacity.

21 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
22 request documentation to determine whether there should be restrictions on the hours of work.

23 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
24 successfully complete a course(s) relevant to the practice of registered nursing no later than six
25 months prior to the end of her probationary term.

26 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
27 Respondent shall submit to the Board the original transcripts or certificates of completion for the
28 above required course(s). The Board shall return the original documents to Respondent after

1 photocopying them for its records.

2 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
3 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
4 amount of \$ 3,975.00. Respondent shall be permitted to pay these costs in a payment plan
5 approved by the Board, with payments to be completed no later than three months prior to the end
6 of the probation term.

7 If Respondent has not complied with this condition during the probationary term, and
8 Respondent has presented sufficient documentation of her good faith efforts to comply with this
9 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
10 extension of Respondent's probation period up to one year without further hearing in order to
11 comply with this condition. During the one year extension, all original conditions of probation
12 will apply.

13 **12. Violation of Probation.** If Respondent violates the conditions of her probation, the
14 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
15 and impose the stayed discipline (revocation/suspension) of Respondent's license.

16 If during the period of probation, an accusation or petition to revoke probation has been
17 filed against Respondent's license or the Attorney General's Office has been requested to prepare
18 an accusation or petition to revoke probation against Respondent's license, the probationary
19 period shall automatically be extended and shall not expire until the accusation or petition has
20 been acted upon by the Board.

21 **13. License Surrender.** During Respondent's term of probation, if she ceases practicing
22 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
23 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
24 Respondent's request and to exercise its discretion whether to grant the request, or to take any
25 other action deemed appropriate and reasonable under the circumstances, without further hearing.
26 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
27 subject to the conditions of probation.

28 Surrender of Respondent's license shall be considered a disciplinary action and shall

1 become a part of Respondent's license history with the Board. A registered nurse whose license
2 has been surrendered may petition the Board for reinstatement no sooner than the following
3 minimum periods from the effective date of the disciplinary decision:

4 (1) Two years for reinstatement of a license that was surrendered for any reason other
5 than a mental or physical illness; or

6 (2) One year for a license surrendered for a mental or physical illness.

7 14. **Physical Examination** - Within 45 days of the effective date of this decision,
8 respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician
9 assistant, who is approved by the Board before the assessment is performed, submit an
10 assessment of the respondent's physical condition and capability to perform the duties of a
11 registered nurse, including a determination as set forth below in Condition 16, "Rule-Out
12 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
13 the Board. If medically determined, a recommended treatment program will be instituted and
14 followed by the respondent with the physician, nurse practitioner, or physician assistant providing
15 written reports to the Board on forms provided by the Board.

16 If respondent is determined to be unable to practice safely as a registered nurse, the
17 licensed physician, nurse practitioner, or physician assistant making this determination shall
18 immediately notify the Board and respondent by telephone, and the Board shall request that the
19 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
20 immediately cease practice and shall not resume practice until notified by the Board. During this
21 period of suspension, respondent shall not engage in any practice for which a license issued by
22 the Board is required until the Board has notified respondent that a medical determination permits
23 respondent to resume practice. This period of suspension will not apply to the reduction of this
24 probationary time period.

25 If the respondent fails to have the above assessment submitted to the Board within the
26 45-day requirement, respondent shall immediately cease practice and shall not resume practice
27 until notified by the Board. This period of suspension will not apply to the reduction of this
28 probationary time period. The Board may waive or postpone this suspension only if significant,

1 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
2 by the respondent to obtain the assessment, and a specific date for compliance must be provided.
3 Only one such waiver or extension may be permitted.

4 **15. Mental Health Examination** - The respondent shall, within 45 days of the effective
5 date of this decision, have a mental health examination including psychological testing as
6 appropriate to determine his/her capability to perform the duties of a registered nurse, including a
7 determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." The
8 examination will be performed by a psychiatrist, psychologist or other licensed mental health
9 practitioner approved by the Board. The examining mental health practitioner will submit a
10 written report of that assessment and recommendations to the Board. All costs are the
11 responsibility of the respondent. Recommendations for treatment, therapy or counseling made as
12 a result of the mental health examination will be instituted and followed by the respondent.

13 If respondent is determined to be unable to practice safely as a registered nurse, the licensed
14 mental health care practitioner making this determination shall immediately notify the Board and
15 respondent by telephone, and the Board shall request that the Attorney General's office prepare
16 an accusation or petition to revoke probation. Respondent shall immediately cease practice and
17 may not resume practice until notified by the Board. During this period of suspension,
18 respondent shall not engage in any practice for which a license issued by the Board is required,
19 until the Board has notified respondent that a mental health determination permits respondent to
20 resume practice. This period of suspension will not apply to the reduction of this probationary
21 time period.

22 If the respondent fails to have the above assessment submitted to the Board within the 45-
23 day requirement, respondent shall immediately cease practice and shall not resume practice until
24 notified by the Board. This period of suspension will not apply to the reduction of this
25 probationary time period. The Board may waive or postpone this suspension only if significant,
26 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
27 by the respondent to obtain the assessment, and a specific date for compliance must be provided.
28 Only one such waiver or extension may be permitted.

1 **16. Rule-Out Substance Abuse Assessment** - If the examiner conducting the physical
2 and/or mental health examination determines that the respondent is dependent upon drugs or
3 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol
4 dependence in remission), that might reasonably affect the safe practice of nursing, then the
5 respondent must further comply with the following additional terms and conditions of probation:

6 **A. Participate in Treatment/Rehabilitation Program for Chemical**

7 **Dependence.** Respondent, at her expense, shall successfully complete during the
8 probationary period or shall have successfully completed prior to commencement
9 of probation a Board-approved treatment/rehabilitation program of at least six
10 months duration. As required, reports shall be submitted by the program on forms
11 provided by the Board. If Respondent has not completed a Board-approved
12 treatment/rehabilitation program prior to commencement of probation,
13 Respondent, within 45 days from the effective date of the decision, shall be
14 enrolled in a program. If a program is not successfully completed within the first
15 nine months of probation, the Board shall consider Respondent in violation of
16 probation.

17 Based on Board recommendation, each week Respondent shall be required
18 to attend at least one, but no more than five 12-step recovery meetings or
19 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
20 support group as approved and directed by the Board. If a nurse support group is
21 not available, an additional 12-step meeting or equivalent shall be added.
22 Respondent shall submit dated and signed documentation confirming such
23 attendance to the Board during the entire period of probation. Respondent shall
24 continue with the recovery plan recommended by the treatment/rehabilitation
25 program or a licensed mental health examiner and/or other ongoing recovery
26 groups.

27 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
28 shall completely abstain from the possession, injection or consumption by any

1 route of all psychotropic (mood altering) drugs, including alcohol, except when the
2 same are ordered by a health care professional legally authorized to do so as part
3 of documented medical treatment. Respondent shall have sent to the Board, in
4 writing and within fourteen (14) days, by the prescribing health professional, a
5 report identifying the medication, dosage, the date the medication was prescribed,
6 the Respondent's prognosis, the date the medication will no longer be required,
7 and the effect on the recovery plan, if appropriate.

8 Respondent shall identify for the Board a single physician, nurse
9 practitioner or physician assistant who shall be aware of Respondent's history of
10 substance abuse and will coordinate and monitor any prescriptions for Respondent
11 for dangerous drugs, controlled substances or mood-altering drugs. The
12 coordinating physician, nurse practitioner, or physician assistant shall report to the
13 Board on a quarterly basis Respondent's compliance with this condition. If any
14 substances considered addictive have been prescribed, the report shall identify a
15 program for the time limited use of any such substances.

16 The Board may require the single coordinating physician, nurse
17 practitioner, or physician assistant to be a specialist in addictive medicine, or to
18 consult with a specialist in addictive medicine.

19 **C. Submit to Tests and Samples.** Respondent, at her expense, shall
20 participate in a random, biological fluid testing or a drug screening program which
21 the Board approves. The length of time and frequency will be subject to approval
22 by the Board. The Respondent is responsible for keeping the Board informed of
23 Respondent's current telephone number at all times. Respondent shall also ensure
24 that messages may be left at the telephone number when she is not available and
25 ensure that reports are submitted directly by the testing agency to the Board, as
26 directed. Any confirmed positive finding shall be reported immediately to the
27 Board by the program and the Respondent shall be considered in violation of
28 probation.

1 In addition, Respondent, at any time during the period of probation, shall
2 fully cooperate with the Board or any of its representatives, and shall, when
3 requested, submit to such tests and samples as the Board or its representatives may
4 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
5 controlled substances.

6 If Respondent has a positive drug screen for any substance not legally
7 authorized and not reported to the coordinating physician, nurse practitioner, or
8 physician assistant, and the Board files a petition to revoke probation or an
9 accusation, the Board may suspend Respondent from practice pending the final
10 decision on the petition to revoke probation or the accusation. This period of
11 suspension will not apply to the reduction of this probationary time period.

12 If Respondent fails to participate in a random, biological fluid testing or
13 drug screening program within the specified time frame, the Respondent shall
14 immediately cease practice and shall not resume practice until notified by the
15 Board. After taking into account documented evidence of mitigation, if the Board
16 files a petition to revoke probation or an accusation, the Board may suspend
17 Respondent from practice pending the final decision on the petition to revoke
18 probation or the accusation. This period of suspension will not apply to the
19 reduction of this probationary time period.

20 **D. Therapy or Counseling Program.** Respondent, at her expense, shall
21 participate in an on-going counseling program until such time as the Board
22 releases her from this requirement and only upon the recommendation of the
23 counselor. Written progress reports from the counselor will be required at various
24 intervals.

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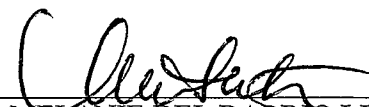
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1 ACCEPTANCE

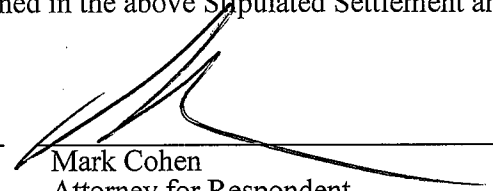
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Mark Cohen. I understand the stipulation and the effect it will
4 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
6 of the Board of Registered Nursing.

7
8 DATED: 10-4-12


MELANIE DEL BARRIO LUTZ
a.k.a. MELANIE BITO DEL BARRIO
Respondent

10 I have read and fully discussed with Respondent Melanie Del Barrio Lutz the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: 10-8-12


Mark Cohen
Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
19 Affairs.

20
21 Dated: 10/9/12

Respectfully submitted,

22 KAMALA D. HARRIS
23 Attorney General of California

24 
25 FRANK H. PACOE
26 Supervising Deputy Attorney General
27 Attorneys for Complainant

28 SF2011202490
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Exhibit A

Accusation No. 2012-644

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 State Bar No. 91740
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
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5 Facsimile: (415) 703-5480
Attorneys for Complainant

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7 **BEFORE THE**
BOARD OF REGISTERED NURSING
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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10 In the Matter of the Accusation Against:

Case No. **2012-644**

11 **MELANIE DEL BARRIO LUTZ**
A.K.A. MELANIE BITO DEL BARRIO
12 **3733 Bobwhite Terrace**
Fremont, CA 94555
13 **Registered Nurse License No. 548136**

A C C U S A T I O N

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
18 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
19 of Consumer Affairs.

20 2. On or about September 17, 1998, the Board of Registered Nursing issued Registered
21 Nurse License Number 548136 to Melanie Del Barrio Lutz, a.k.a. Melanie Bito Del Barrio
22 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
23 the charges brought herein and will expire on June 30, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.
28

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Business and Professions Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Business and Professions Code, in pertinent part, states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

. . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

. . .

7. Section 2762 of the Business and Professions Code, in pertinent part, states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

• • •

8. Section 490 of the Business and Professions Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 125.3 of the Business and Professions Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

10. Respondent is subject to disciplinary action under Business and Professions Code section 2761(f) in that she was convicted of a crime or act that is substantially related to the qualifications, functions, or duties of a registered nurse.

a. On or about December 23, 2010, in a criminal proceeding entitled People of the State of California v. Melanie Delbarrio Lutz in San Francisco County Superior Court, Case No. 10001610, the respondent was convicted by her plea of nolo contendere of violating Vehicle Code section 23153(a) (driving under the influence), a misdemeanor.

b. The circumstances surrounding the conviction are that on or about January 15, 2010, at 0216 hours, California Highway Patrol (CHP) officers responded to the scene of a vehicle traffic collision involving a pedestrian Caltrans worker on Westbound Interstate Highway 80 (I-80) in San Francisco County. When the officers made contact with respondent they noticed the strong presence of an alcoholic beverage on her person, they noticed that her speech was thick

1 and slurred, and they noticed that her eyes appeared red and watery. The officers administered
2 field sobriety tests to respondent which explained and demonstrated to her. Respondent
3 acknowledged that she understood the field sobriety tests. However, respondent failed to
4 successfully complete these tests. Thereafter respondent was arrested for driving a motor vehicle
5 while under the influence of an alcoholic beverage; for driving while having a blood alcohol level
6 of .08 percent and more which caused bodily injury to another person; and that she failed to stop
7 her vehicle at the accident scene and give her name, address, the registration number and render
8 assistance.

9 Additionally, respondent refused to provide the officers with a breath sample for a
10 Preliminary Alcohol Screening Device (PAS) test, instead she chose a blood test. The officers
11 transported respondent to the San Francisco County Jail where a sample of her blood was taken.
12 On March 16, 2010, the forensic analysis report from respondent's blood alcohol test revealed
13 that her blood alcohol level was 0.18 percent at the time of her arrest.

14 c. On or about December 23, 2010, the respondent was placed on probation for 3 years,
15 ordered to serve 7 days in jail, ordered to enroll and complete a 3 month First Offenders Program,
16 and pay fines and fees in the amount of \$1,482.00.

17 SECOND CAUSE FOR DISCIPLINE

18 (Use of Alcohol and or Drugs to an Extent or in a

19 Manner Dangerous or Injurious to Herself or Others)

20 11. Respondent is subject to disciplinary action under Business and Professions Code
21 section 2761(a) on the grounds of unprofessional conduct, as defined by Business and Professions
22 Code section 2762(b), in that on or about January 15, 2010, she used alcohol to an extent or in a
23 manner dangerous or injurious to herself or others as forth in paragraph 10, above.

24 THIRD CAUSE FOR DISCIPLINE

25 (Conviction of Drug/Alcohol Offense)

26 12. Respondent is subject to disciplinary action under Business and Professions Code
27 section 2761(a) on the grounds of unprofessional conduct, as defined by Business and Professions
28

1 Code section 2762(c), in that on or about December 23, 2010, she was convicted of a criminal
2 offense involving the use of alcohol as set forth in paragraph 10, above.

3
4 PRAYER

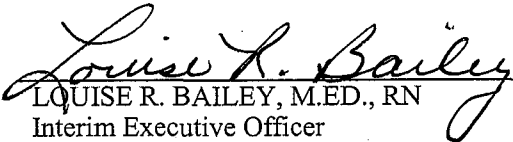
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Registered Nursing issue a decision:

7 1. Revoking or suspending Registered Nurse License Number 548136, issued to
8 Melanie Del Barrio Lutz, a.k.a. Melanie Bito Del Barrio;

9 2. Ordering Melanie Del Barrio Lutz, a.k.a. Melanie Bito Del Barrio, to pay the Board
10 of Registered Nursing the reasonable costs of the investigation and enforcement of this case,
11 pursuant to Business and Professions Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.
13
14

15 DATED: April 18, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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